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DINA SHAPIRO

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DINA SHAPIRO, Plaintiff, vs. AETNA LIFE INSURANCE COMPANY LONG TERM DISABILITY PLAN; AETNA LIFE INSURANCE COMPANY IN ITS CAPACITY OF ADMINISTRATOR OF THE AETNA LIFE INSURANCE COMPANY LONG TERM DISABILITY PLAN, Defendants.	Case No.: PLAINTIFF'S COMPLAINT FOR: 1. CLAIM FOR BENEFITS PURSUANT TO ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) 2. CLAIM FOR BREACH OF FIDUCIARY DUTY PURSUANT TO ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) 3. CLAIM FOR DECLARATORY RELIEF PURSUANT TO 28 U.S.C. § 2201

Plaintiff Dina Shapiro herein sets forth the allegations of her Complaint against Defendants Aetna Life Insurance Company Long Term Disability Plan; Aetna Life Insurance Company in its Capacity of Administrator of the Aetna Life Insurance Company Long Term Disability Plan.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 (the amount in controversy exceeds the sum of $75,000.00), and §502(a)(1)(B) of Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(e).

2. Venue lies in the Central District of California pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the ERISA-governed plan at issue was administered in part in this District, and the breach took place in this district . Venue is also proper pursuant to 28 U.S.C. § 1391(b) because some of the events or omissions giving rise to the claim occurred within the District.

THE PARTIES

3. Plaintiff Dina Shapiro (hereinafter referred to as "Plaintiff" or "Ms. Shapiro") is now, and at all times mentioned herein was, a resident of the State of California, County of Los Angeles. Plaintiff is and at all times mentioned herein was a participant in the Aetna Life Insurance Company Long Term Disability Plan ("LTD"), through her employment by Bank of America Corporation.

4. Plaintiff is informed and believes that Defendant Aetna Life Insurance Company Long Term Disability Plan is an employee welfare benefit plan offering long term disability benefits, within the meaning of ERISA, U.S.C. § 1002(2)(A). Plaintiff is informed and believes that Defendant Aetna Life Insurance Company in its Capacity of Administrator of the Aetna Life Insurance Company Long Term Disability Plan is the plan administrator, and a corporation incorporated in the State of Connecticut with its principal place of business in the State of Connecticut, authorized to transact and transacting business in the State of California. Both defendants are hereinafter referred to as "Defendants" or "Aetna."

FIRST CLAIM FOR RELIEF

[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)
Against Both Defendants]

5. Plaintiff incorporated Paragraphs 1 through 4 as though fully set forth herein.

6. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) permits a plan participant to

bring a civil action to recover benefits due to her under the plan, to enforce her rights under the terms of a plan, and/or to clarify her rights to future benefits under the terms of a plan.

7. Plaintiff was employed by Bank of America Corporation as a mortgage underwriter. Aetna has issued to plaintiff's employer Bank of America Corporation the group long term disability ("LTD" or "Plan") insurance coverage effective January1, 2011, pursuant to the group insurance policy LTD, Policy Number GP-811383 (hereinafter the "Policy".)

8. Plaintiff became unable to work on June 2, 2014. She lost the ability to perform basic work activities and simple tasks due to various physical impairments, including, without being limited hereto, the stenosis and nerve root impingement at different levels of her lower back, muscololigamentous injury to cervical spine, thoracic spine and lumbar spine, cervical and lumbar spine radiculopathy, bilateral sacroilitits, disk bulge and disc extrusion, bilateral trochanteric bursitis, wrist cyst and hypertension..

9. It has been medically determined that plaintiff had a medically determinable impairment or combination of impairments that is severe and have had more that a minimal effect on her work. Plaintiff has difficulty to care for herself entirely, she constantly requires the assistance of another to perform simple tasks and complete any household chores.

10. The residual functional capacity of plaintiff does not allow her to concentrate to the level as required to perform highly precise and meticulous occupation of accounting. Additional her physical limitations, both sedentary and postural, prevent her from performing and execution of the duties required. Considering her age and physical condition, plaintiff clearly can not engage in a "substantial gainful work" as defined under the Code.

11. Plaintiff's last day of work was June 2, 2014. On or about said date plaintiff submitted a LTD claim to Aetna (Disability Claim No. 10733828).. Disability started when plaintiff was insured under the Policy. Her lost of earnings is a direct result of her illness.

12. By the letter dated November 25, 2014 Aetna advised plaintiff that her claim was denied. According to the letter, the denial was due to lack of medical evidence to support her inability to work, it was determined that plaintiff failed to meet the Plan's definition of disability, that she was not disabled as defined in the Policy.

13, On May 21, 2105, plaintiff timely appealed the decision of denial in compliance with the review requirements established by Plan and the Policy. Additional documents were included with the appeal request.

14. By the letter of August 19, 2015 Aetna advised that the decision to deny the benefits was affirmed. It was determined that the information submitted for the purpose of appealing the denial of benefits did not support a disability, as defined by the Plan.

15. Plaintiff has completed all steps required prior to the filing of this Complaint under the Plan and ERISA, including an internal appeal of the denial of benefits pursuant to 29 U.S.C. § 1133.

16. The defendants' decision denying benefits to Ms. Shapiro is erroneous, arbitrary, capricious, and an abuse of discretion. By wrongfully denying plaintiff payment of benefits, refusing to apply the law in effect at the time of her claim, defendants have violated and continue to violate ERISA, 29 U.S.C. § 1132(a)(1)(B), the terms of the Plan and Policy.

17. As a direct and proximate result of the wrongful denial of benefits, Ms. Shapiro has been deprived of the long term disability benefits to which she is entitled under the Plan from June 2, 2014 to the present and continuing in a sum to be determined at the time of trial, i.e. both the accrued and future benefits.

18. As a further direct and proximate result of the wrongful denial of benefits, Ms. Shapiro has been required to incur attorney fees to pursue this action, and is entitled to have such fees paid by defendants pursuant to 29 U.S.C. § 1132(g)(1), ERISA § 502(g)(1).

SECOND CLAIM FOR RELIEF

[Claim for Breach of Fiduciary Duty Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) Against Both Defendants]

19. Plaintiff incorporated Paragraphs 1 through 18 as though fully set forth herein.

20. ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3) authorizes a plan participant to file suit to "enjoin any act or practice" that violates Title I of ERISA or the terms of a plan, and/or to obtain "other appropriate relief" to redress such violations, including the fiduciary duty provisions.

21. ERISA § 404(a), 29 U.S.C. § 1004(a) requires that defendants, as a fiduciary,

discharge its duties with respect to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan, and with care, skill, prudence and diligence under the circumstances then prevailing to a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

22. By engaging in the acts and omissions described above, including but not limited to interpreting the Plan in a manner contrary to applicable federal law, refusing to apply the law in effect at the time of Ms. Shapiro's claim, defendants have breached their fiduciary duty to Ms. Shapiro and have violated Title I of ERISA.

23. Defendants have breached their fiduciary duties to Ms. Shapiro as established by ERISA by the failure to provide the benefits, as in doing so they acted without the required care, prudence and diligence, did not devote utmost loyalty to the interests of Ms. Shapiro , did not make a decision regarding the Plan solely in the interests of Ms. Shapiro.

24. As a direct and proximate result of the defendants' breaches of their fiduciary duties and violations of Title I of ERISA, Ms. Shapiro has been harmed as deprived of the disability benefits, both accrued and future benefits, and entitled to injunctive and other appropriate equitable relief to remedy the breaches, pursuant to ERISA § 503(a)(3), 29 U.S.C. § 1132(a)(3), including but not limited hereto, the injunction against the defendants improper refusal to pay the benefits.

25. As a further direct and proximate result of the breach by defendants of their fiduciary duties, Ms. Shapiro has been required to incur attorney fees to pursue this action, and is entitled to have such fees paid by defendants pursuant to 29 U.S.C. § 1132(g)(1), ERISA § 502(g)(1).

THIRD CLAIM FOR RELIEF

[Claim for Declaratory Relief Pursuant to 28 U.S.C. § 2201 Against Both Defendants]

26. Plaintiff incorporated Paragraphs 1 through 25 as though fully set forth herein.

27. The Declaratory Judgment Act, 28 U.S.C. § 2201 permits a federal court, in a case of actual controversy within its jurisdiction, to declare the rights and other legal relations of any

interested party seeking such declaration.

28. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), a participant in the plan is entitled to declaratory judgment on entitlement to the accrued benefits and request to clarify her rights to future benefits under the terms of the plan.

29. A controversy now exists between the parties as to whether Ms. Shapiro is entitled to the disability benefits under the Plan, both the accrued and future benefits. Ms. Shapiro seeks the declaration of this Court that she is entitled to disability benefits from June 2, 2014 forward and continuing so long as she remains disabled as defined by the Plan, in addition to an award of disability benefits.

30. Plaintiff desires a judicial determination that she is entitled to disability benefits from June 2, 2014 forward and continuing so long as he remains disabled as defined by the Plan, in addition to an award of disability benefits.

31. Such a declaration is necessary and appropriate at this time in order the parties may ascertain their rights and duties with respect to the terms of the plan. Furthermore, a determination of the respective rights and liabilities of the parties is necessary and appropriate in order to avoid a circumvention of laws and the circuitry and multiplicity of actions concerning the subject instruments and acts.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

As to the First Claim for Relief:

A. Declare that Defendants have violated the terms of the Plan.

B. Declare that Plaintiff meets the Disability Plan's definition of "disability" for purposes of long term disability from June 2, 2014 forward and continuing so long as he remains disabled as defined by the Plan.

C. Order Defendants to pay long term disability payments to Plaintiff from June 2, 2014 to the present, together with interest at an appropriate rate on each monthly payment from the date it became due until the date it is paid, and reinstate Plaintiff's future monthly disability benefits.

D. Award Plaintiff reasonable attorney's fees and costs of suit incurred herein pursuant to 29 U.S.C. § 1132(g)(1), ERISA § 502(g)(1).

As to the Second Claim for Relief:

A. Declare that Defendants breached their fiduciary duty to Plaintiff.

B. Declare that by refusing to pay Plaintiff the long term disability benefits defendants have violated ERISA.

C. Enjoin Defendants from refusing to pay Plaintiff the long term disability benefits both the accrued ones and the future benefits.

D. Require Defendants to reform the Plan with respect to Ms. Shapiro such that she is deemed eligible to receive the long term disability payments since June 2, 2014

E. Order that Defendants provide other appropriate editable relief, including but not limited to surcharge, restitution, prejudgment interest, and imposing a constructive trust and/or equitable lien on any funds wrongfully held by Defendants.

F. Award Plaintiff reasonable attorney's fees and costs of suit incurred herein pursuant to 29 U.S.C. § 1132(g)(1), ERISA § 502(g)(1).

As to the Third Claim for Relief:

A. Declare that Defendants erred in applying to Plaintiff the Disability Plan's definition of "disability" and therefore improperly refused to pay Plaintiff the long term disability benefits.

B. Declare that Plaintiff is entitled to disability benefits from June 2, 2014 forward and continuing so long as he remains disabled as defined by the Plan.

As to All Claims for Relief

A. For costs of suit incurred herein.

B. For such other and further relief as the Court deems just and proper.

Dated: March 6, 2017 LAW OFFICES OF JULIA SKLAR

By:________________________
Julia Sklar
Attorneys for Plaintiff
DINA SHAPIRO